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SEP - 2 2006

In re Application of:
Ryoji Kaneko et al.
Serial No.: 10/709,971
Filed: June 10, 2004
Attorney Docket No.: SIMTEK6915

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DECISION ON PETITION
TO ACCEPT PAPERS AS BEING TIMELY
FILED
:

This is a decision on the petition filed on August 7, 2006, requesting that the accompanied appeal brief and appeal brief fee be accepted as being timely filed.

The petition is DENIED.

Petitioner asserts that because there was a delay in rendering a decision on petition, petitioner could not timely file the appeal brief because petitioner "had no idea what form the claims would take."

A review of the file record indicates that a Final Office action was mailed on September 20, 2005. An Amendment After Final Rejection was filed December 05, 2005. An Advisory Action was mailed on December 19, 2005, refusing entry of the amendment because it raised a new issue that required further consideration and/or search. On December 20, 2005, petitioner timely filed a Notice of Appeal and a petition seeking supervisory authority review and directing the examiner to enter the Amendment After Final Rejection. A renewed/supplemental petition was filed March 19, 2006. The petition was treated under 37 C.F.R. § 1.181 and was denied in decision mailed August 1, 2006. An appeal brief was filed on August 7, 2006, along with the instant petition.

Pursuant to 37 C.F.R. § 41.37, an appeal brief must be filed within two months of the date of the filing of the Notice of Appeal. This time period is extendable under 37 C.F.R. § 1.136(a). For the instant application, the appeal brief must have been filed no later than July 20, 2006 along with a petition for the maximum available extension of time and fees therefor. The appeal brief was filed on August 7, 2006, after the maximum extendable time period had expired.

Pursuant to 37 C.F.R. § 1.181(f): "The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which

relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.”

While it is regrettable that a decision was not promptly rendered, the filing of the petition did not toll the time for filing the appeal brief pursuant to 37 C.F.R. § 1.181(f). As such, it is incumbent upon an applicant to take steps to ensure against abandoning of his/her application. The appeal brief was filed after the time for filing the appeal brief had expired.

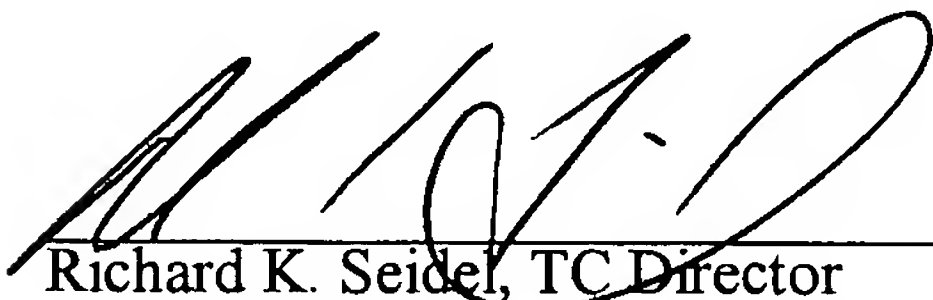
Pursuant to M.P.E.P. § 1205.01, the failure to timely file an appeal brief results in the appeal being dismissed and the application becoming abandoned by operation of law when there is no allowable claim. In the instant application, claims 1-22, all the claims that were pending in the application, were finally rejected and appealed. Since the appeal brief was untimely and there was no allowed claim, this application became abandoned after February 20, 2006. The appeal brief cannot be accepted until and unless the application is revived.

For the above stated reasons, the petition is denied.

Petitioner may wish to consider filing a petition under 37 C.F.R. § 1.137 (a) or (b) to revive the application.

Any request for reconsideration of this decision must be submitted within 2 (two) months of the date of this decision in order to be considered timely.

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.



Richard K. Seidel, TC Director
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